

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

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RYSTA LEONA SUSMAN, both individually  
and as Legal Guardian of Shane Allen  
Loveland, and JACOB SUMMERS,

Case No. 8:18CV127

Plaintiffs,

v.

THE GOODYEAR TIRE & RUBBER  
COMPANY,

Defendant.

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**JOINT AND AGREED STIPULATION  
FOR PARTIAL DISMISSAL OF  
CLAIMS WITH PREJUDICE AND FOR  
WITHDRAWAL OF DEFENDANT’S  
MOTION TO EXCLUDE PLAINTIFF’S  
FAILURE TO WARN EXPERT, LILA F.  
LAUX**

Plaintiff Rysta Leona Susman, individually and as the legal guardian of Shane Allen Loveland, Plaintiff Jacob Summers (collectively “Plaintiffs”) and Defendant The Goodyear Tire & Rubber Company (“Goodyear”), by and through undersigned counsel and pursuant to Local Rule 7.3 and Federal Rule of Civil Procedure 41 hereby submit this Joint and Agreed Stipulation for Partial Dismissal of Claims with Prejudice and for Withdrawal of Defendant’s Motion to Exclude Plaintiffs’ Failure to Warn Expert, Lila F. Laux.

1. This is a products liability action. Plaintiffs’ claims include a strict products liability failure to warn claim asserted in Count II: “Further, the subject tire was defective and unreasonably dangerous because it lacked adequate warnings to consumers and users about the dangers associated with tire aging irrespective of wear and use, including detreads.” (Notice of Removal, Ex. 1 – Exhibits, Ex. D – Complaint (hereinafter, “Compl.”) ¶ 25, ECF No. 1-1 at 24.) Plaintiffs have asserted no other failure to warn claim of any type.

2. Plaintiffs proffered one expert on this claim, Lila F. Laux, PhD.

3. On August 12, 2019, Goodyear filed its Motion to Exclude Plaintiffs’ Failure to

Warn Expert, Lila F. Laux, and supporting briefing (the “Laux Motion”). (ECF 111, 112, 113, 113a.) Goodyear also moved for partial summary judgment on, among other things, Plaintiffs’ failure to warn claim (the “MSJ”). (ECF 107, 108, 109).

4. Pursuant to Local Rule 7.3, counsel for Plaintiffs and Goodyear have stipulated and agreed as follows: (a) Goodyear hereby withdraws the Laux Motion, rendering it moot; (b) Plaintiffs hereby voluntarily dismiss with prejudice all claims of any type in this case based on a failure to warn theory, and will not call any expert or lay witness, including Laux, to testify on any warnings theory; and (c) this stipulation and agreement renders moot the portions of Goodyear’s MSJ regarding Plaintiffs’ failure to warn claim.

5. Pursuant to Local Rule 7.3(b), Plaintiffs and Goodyear request that the Court enter an order reflecting this stipulation and agreement.

6. Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), this filing constitutes a “stipulation of dismissal signed by all parties who have appeared” which does not require approval of the Court as to Plaintiffs’ decision to dismiss with prejudice the aforementioned claim against Goodyear.

WHEREFORE Plaintiffs and The Goodyear Tire & Rubber Company respectfully inform this Honorable Court of the foregoing stipulation and agreement and request that the Court enter an order consistent therewith.

/s/ Kyle W. Farrar  
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Kyle W. Farrar  
KASTER, LYNCH, FARRAR & BALL, LLP  
1010 Lamar, Suite 1600  
Houston, TX 77002  
(713) 221-8300  
[kyle@fbtrial.com](mailto:kyle@fbtrial.com)

Paul E. Godlewski  
SCHWEBEL, GOETZ & SIEBEN, P.A.  
80 South 8<sup>th</sup> Center  
Suite 5120, IDS Center  
Minneapolis, MN 54402  
(612) 344-0327  
[pgodlewski@schwebel.com](mailto:pgodlewski@schwebel.com)

Michael F. Coyle  
FRASER, STRYKER LAW FIRM  
409 South 17<sup>th</sup> Street  
Suite 500, Energy Plaza  
Omaha, NE 68102  
(402) 341-6000  
[mcoyle@fraserstryker.com](mailto:mcoyle@fraserstryker.com)

*Attorneys for Plaintiffs*

/s/ Edward S. Bott, Jr.  
\_\_\_\_\_  
Edward S. Bott, Jr.  
Clark W. Hedger  
Juliane M. Rodriguez  
GREENSFELDER, HEMKER & GALE, P.C.  
10 South Broadway, Suite 2000  
St. Louis, MO 63102  
(314) 241-9090  
Fax: (314) 345-5465  
[esb@greensfelder.com](mailto:esb@greensfelder.com)  
[chl@greensfelder.com](mailto:chl@greensfelder.com)  
[jrodriguez@greensfelder.com](mailto:jrodriguez@greensfelder.com)

AND

BAIRD HOLM LLP  
Jennifer D. Tricker (NE# 23022)  
1700 Farnam Street, Suite 1500  
Omaha, NE 68102-2068  
(402) 344-0500  
[jtricker@bairdholm.com](mailto:jtricker@bairdholm.com)

*Attorneys for The Goodyear Tire & Rubber Company*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was filed with the Clerk of the Court and served upon all attorneys of record using the CM/ECF system this 30th day of August, 2019.

Kyle W. Farrar  
KASTER, LYNCH, FARRAR & BALL, LLP  
1010 Lamar, Suite 1600  
Houston, TX 77002  
[kyle@fbtrial.com](mailto:kyle@fbtrial.com)

Paul E. Godlewski  
SCHWEBEL, GOETZ & SIEBEN, P.A.  
80 South 8<sup>th</sup> Center  
5120 IDS Center  
Minneapolis, MN 54402  
[pgodlewski@schwebel.com](mailto:pgodlewski@schwebel.com)

Michael F. Coyle  
FRASER, STRYKER LAW FIRM  
409 South 17<sup>th</sup> Street  
Suite 500, Energy Plaza  
Omaha, NE 68102  
[mcoyle@fraserstryker.com](mailto:mcoyle@fraserstryker.com)

*Attorneys for Plaintiffs*

\_\_\_\_\_  
/s/ Edward S. Bott, Jr.

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